IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 463 of 2005
with
CIVIL APPLICATION NO. 1834 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMANBHAI DAHYABHAI PATEL - Appellant(s)
Versus
JYOTIBEN BHIKHUBHAI PATEL - Defendant(s)

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Appearance :
MR BS SUPEHIA for Appellant(s) : 1,
MR RR MARSHALL for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 30/04/2007
ORAL JUDGMENT

Present Appeal has been filed by the appellant, original-opponent, father of two minor children, Vatsalkumar and Khyati, challenging the

judgment and order passed by the learned Joint District Judge, Valsad dated 27th January 2005 in Miscellaneous Civil (Guardian) Application No. 77 of 2002 by which the learned Joint District Judge has allowed the application under the provisions of the Guardians and Wards Act submitted by the mother,respondent herein by which the learned Judge has appointed the mother Jyotiben Bhikhubhai as guardian and also to have custody of the aforesaid two minors.

2. This Court is, at present, not observing any thing on merits and/or legality and validity of the judgment and order passed by the learned trial Court as the present Appeal is to be disposed of in view of broad consensus between the parties. It is also required to be noted that this Court has called the aforesaid two minor children in the Chamber and has deliberated with them at length and it appears that both of them are very well taken care of by their mother or the mother is looking after them. This Court

has also tried to ascertain the wishes of the aforesaid two minor children and it appears that none of them is ready to go with their father at least at present. They have also expressed their willingness that let the interim arrangement as per the order dated 3.10.2005 passed by this Court in the present First Appeal be continued meaning thereby the father may meet both the children in the School. Thus, prima facie, it appears that in the interests and welfare of the minors at present the custody be continued with the mother. However, it is also made clear and observed by the Court that the appellant-father is coming from Mumbai to Valsad on every Monday and he is meeting the aforesaid two minor children in the school on every Monday, i.e., the appellant meets daughter Khyati on every 1st and 3rd Monday of the month; and son Vatsal on every 2nd and 4th Monday of the month during recess hours as per the above arrangement. This shows the concern of the father. However, considering the wishes of the aforesaid two minors at present it

is not possible to hand over custody of the aforesaid two minors to the father at least at present.

3. However, the learned advocates, Shri Supehia and Shri Marshall appearing on behalf of the respective parties as well as the appellant and the opponent, i.e., father and mother of the minors, have submitted that they have arrived at a broad consensus between them and accordingly suggested that the appellant-herein, i.e., father of the minors be allowed to meet the aforesaid two minors on every 1st and 3rd Saturday of the month for the time being and thereafter after some time liberty be reserved in their favour to move an appropriate application for modification of this arrangement, and accordingly the judgment and order passed by the learned trial Court be modified to the aforesaid extent.

4. Under the circumstances considering the broad consensus arrived at between both the

learned advocates appearing on behalf of the respective parties as well as between the appellant and the opponent and considering the wishes of the minors, the judgment and order dated 27th January 2005 passed by the learned Joint District Judge, Valsad in Misc. Civil (Guardian) Application No. 77/2002 is modified to the extent that the appellant is permitted to visit Maniba Kanya Vidhyalaya on every 1st and 3rd Saturday of the month to meet his daughter Khyati during recess hours. The appellant can meet his daughter in presence of any staff member who may be deputed by the School authorities. The appellant is also permitted to visit D.M.D.G. Ghanswala Municipal High School, Bechar Road, Valsad on every 1st and 3rd Saturday of the month before half-an-hour of start of the school in order to meet his Son Vatsalkumar now studying in 7th Standard in that school. The school authorities may depute some staff member in whose presence the appellant can meet his son. Shri Marshall, learned advocate appearing on behalf of

the opponent herein, Jyotiben Bhikhabhai Patel has stated before the Court that his client mother will see to it that minor Son Vatsal is kept present half-an-hour before the start of the school.

5. With this modification, the present Appeal is required to be disposed of. However, as agreed between the parties as well as between the learned advocates appearing on behalf of the respective parties, liberty is reserved in favour of the appellant as well as the opponent to apply for modification of the present order and the above arrangement. The present Appeal is disposed of accordingly in terms of above arrangement and modification and the judgment and order of the learned trial Court is modified to the aforesaid extent. However, there shall be no order as to costs.

6. In view of disposal of the First Appeal, no order on Civil Application No. 1854 of 2005 which shall stand disposed of.

[M.R. Shah, J.]

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